

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

INA STEINER, DAVID STEINER, and
STEINER ASSOCIATES, LLC,

Plaintiffs,

v.

EBAY INC., *et al.*,

Defendants.

Civil Action No. 1:21-CV-11181-DPW

STATUS REPORT OF THE UNITED STATES

The United States of America, by and through undersigned counsel, respectfully submits this Status Report pursuant to 28 U.S.C. § 517.¹ The United States (the “Government”) provides this report in response to a request for an update from the Clerk of Court to explain the progress that the Government has made related to unsealing information presently sealed on the docket in the above-captioned lawsuit. The Government is not a party to this matter and takes no position on the merits of Plaintiffs’ claims. However, the Government discovered that two filings made on the docket of this case may contain classified information, and the Court therefore placed them under seal until the Government and the parties could propose a resolution as to how these documents should be handled. The documents include Plaintiffs’ Motion for Leave to File Supplement to Plaintiffs’ Consolidated Opposition to Defendants’ Motion to Dismiss, ECF No.

¹ This statute provides the United States with a statutory right to advise the Court of its interest here. Specifically, Section 517 authorizes the Attorney General to send “any officer of the Department of Justice . . . to attend to the interests of the United States in a suit pending in a court of the United States.” 28 U.S.C. § 517. At this time, the United States does not file a statement of interest or a motion to intervene, but it will continue to evaluate whether it is necessary to do so as this matter progresses.

144 (the “Motion for Leave to File”), and Plaintiffs’ Supplemental Opposition to Defendants’ Motions to Dismiss, ECF No. 146 (the “Supplemental Opposition”).

The Government has reviewed the Motion for Leave to File, ECF No. 144, and determined that portions of that submission do contain classified information. To date, the Government has been unable to review the Supplemental Opposition, ECF No. 146, because it was placed under seal before the Government could obtain a copy. The Government intends to file a separate request that the sealed filing at ECF No. 146 be made available to the Government.²

As for the Motion for Leave to File, ECF No. 144, the Government has developed a proposal that would unseal the vast bulk of the filing while protecting very limited classified information. The undersigned counsel has met and conferred with counsel for Plaintiffs, which included traveling to Boston for an in-person meeting on November 17, 2022 to outline the Government’s proposal. The Government has begun conferring with counsel for Defendant eBay and will confer with counsel for the other defendants in this matter shortly.

In addition to setting out a proposal to the Court for the unsealing of the Motion for Leave to File, the Government is seeking agreement on a protective order to ensure that classified information remains protected throughout the discovery process, should the case proceed to discovery, and until the conclusion of this matter. The Government has developed a proposal for that protective order, which it has described to counsel for Plaintiffs and for Defendant eBay, and which it intends to share with counsel for the other defendants.

The Government hopes to reach agreement with the parties on a proposal for unsealing most of the contents of the Motion for Leave to File and the Supplemental Opposition, as well as

² The Government notes, however, that documents attached as exhibits to the Supplemental Opposition appear to be identical to documents attached to the Motion for Leave to File, which contain classified information.

on a protective order. Plaintiffs' counsel indicated that she anticipated responding to the Government's proposal during the week of November 28, though the Government has not yet received a response, and the Government continues to diligently reach out to the eleven named defendants in this matter. Additionally, as noted, the Government has been unable to review the Supplemental Opposition, ECF No. 146, and will file a separate request to make that sealed filing available to the Government.

The Government proposes to file a further status report by December 16, 2022, informing the Court on the progress of its discussions with the parties and, in particular, on whether the Government and the parties have agreed on a plan for unsealing the two presently sealed documents, as well as on a protective order. A proposed order is attached.

Dated: December 5, 2022

Respectfully submitted,

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